

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KATHLEEN O'HARA,

18-CV-8502 (KMK)

Plaintiff,

-against-

BOARD OF COOPERATIVE EDUCATIONAL SERVICES.
SOUTHERN WESTCHESTER; HAROLD COLES, JAMES
GRATTO, DAVID PULLEY, LISA SCHUCHMAN, and
JOHN KNIGHT,
in their official and individual capacities.

O'HARA DECLARATION IN OPPOSITION TO MOTION TO DISMISS

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

KATHLEEN O'HARA, declares under the penalty of perjury as follows:

1. I am the Plaintiff in the above-captioned matter. As such, I am fully familiar with the facts and circumstances surrounding this action. I submit this affidavit in opposition to Defendant's motion to dismiss, along with Plaintiff's memorandum of law in opposition.
2. Some of the material used to oppose the motion is contained within the limited currently-available pre-discovery exhibits, which are attached as follows:

| | |
|---------|--|
| “Ex. 1” | Counseling Memorandum, dated March 4, 2016; |
| “Ex. 2” | Response to Counseling Memorandum, dated March 18, 2016; |
| “Ex. 3” | Email to Gratto, dated March 7, 2016; |
| “Ex. 4” | Counseling Memorandum, dated April 12, 2016; |
| “Ex. 5” | Counseling Memorandum, dated April 12, 2016; |
| “Ex. 6” | Doctor’s Leave Request, dated April 26, 2016; |

- | | |
|----------|--|
| “Ex. 7” | Knight to O’Hara Letter, dated April 29, 2016; |
| “Ex. 8” | Knight to O’Hara Letter, dated June 8, 2016; |
| “Ex. 9” | Knight to O’Hara Letter, dated June 16, 2016; |
| “Ex. 10” | Determination of Probable Cause from the New York State Division of Human Rights, dated August 31, 2017 |

3. Additionally, I provide the below information to offer clarification to points raised in Defendant’s motion. The information below is not presented in a story-like format. Rather it is to be used in conjunction with the accompanying Memorandum of Law.
4. After I was appointed to Board of Cooperative Educational Services, Southern Westchester (“SWBOCES”), I have been made aware of and have been diagnosed with several disabilities. These include Irritable Bowel Syndrome (“IBS”), hiatal hernia, gastritis, gastroesophageal reflux disease (“GERD”), ulcers, mitral valve prolapse, reactive asthma/reactive airway disease, and post-concussion syndrome.
5. During the course of my employment with SWBOCES, I have provided notice of my disabilities to SWBOCES, including by providing doctors’ notes.
6. While working for the SWBOCES, my disabilities have impacted (and continue to impact) my life in a number of ways, including, but not limited to the following:
 - a. Because of IBS, I require frequent bathroom trips. The conditions of IBS causes me to make frequent bathroom trips, and can also cause me to experience extreme constipation and stomach pain. I have experienced symptoms of IBS since I was diagnosed more than twenty (20) years ago. The discomfort associated with IBS caused me to experience pain which caused me to be unable to sleep, particularly during times of stress. This causes nausea, fatigue, headaches, as well as gastrointestinal spasms.


- b. Because of hiatal hernia, I experience feelings of acid from my stomach being pushed up into my esophagus, causing agitation and pain. I have experienced symptoms of hiatal hernia since I was diagnosed more than twenty (20) years ago. As a result of stress, I experience heightened symptoms of hiatal hernia, including nausea and food digestion pain.
- c. Because of gastritis, I experience stomach pain and nausea. Like IBS and hiatal hernia, I have been diagnosed with gastritis, influenced by stress, for more than twenty (20) years.
- d. Because of GERD, I have experienced stomach pain, explosive coughing episodes after eating, a hoarse voice, feelings of sickness and nausea, and abdominal pain. I have been diagnosed for more than twenty (20) years.
- e. Because of mitral valve prolapse, I have experienced flaps associated with the mitral valve of my heart are irregular. I have been advised by my doctors that my diagnosis and experience with my condition causes chest pain, and that stress further agitates my condition. This diagnosis was made while I was working with SWBOCES.
- f. Because of reactive asthma/reactive airway disease, I have experienced restriction in the flow of oxygen to my lungs, which impacts my ability to breath, and negatively influences my ability to recover from colds and sickness. This diagnosis was made while I was working with SWBOCES.
- g. Because of post-concussion syndrome, I have experienced loss of mental focus, which can cause me to experience faintness, dizziness, and lightheadedness. I

was diagnosed following my 3rd concussion in under two (2) years, while on duty with SWBOCES, and occurring on or around October 20, 2014.

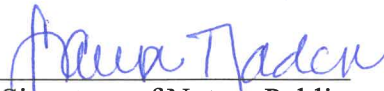
- h. Because of recurring ulcers, I experience stomach pain and gastrointestinal distress. During the 2015/16 School Year, I experienced ulcers requiring medical treatment. Beginning in the 2015/16 School Year, I began experiencing side effects from my prior medications, requiring changes in my medications and a larger and more frequent dosage.
7. My Doctors have told me that these are permanent conditions that will remain with me for my lifetime, requiring continued medication and treatment. So far, my symptoms have persisted to date.
8. Notably, my recollection of the 2015/16 School Year reflects that I was experiencing continuing and enduring stomach pain, which I had not previously experienced.
9. During the 2015/16 School Year, I was forced to make repeated and unusual doctors' office visits and required testing from gastroenterologists and cardiologists. This was unusual, and resultant from the constant workplace stress and anxiety I experienced.
10. During the 2015/16 School Year, and continuing to date, I began being required to monitor and plan my meal scheduling for the specific purpose of avoiding the increasing negative impact that IBS was having on my life.
11. While working at SWBOCES, I made frequent complaints concerning matters I believed to be improper, and which potentially could serve to jeopardize not only my clinical license as a Speech Language Pathologist, and my employment as a Teacher of the Speech and Hearing Handicapped, but also, the services provided to students under SWBOCES care.

12. In addition, I had already experienced threats concerning my continued employment, including the December 2014 threats by Assistant Superintendent David Pulley to pursue potential termination. As a result, I was in fear that my complaints jeopardized my job, and that disciplinary action, even if false, could jeopardize my retirement.
13. Due to my concerns, I frequently made complaints about potential misconduct and misuse of my licensure.
14. Following my complaints, I made complaints concerning a hostile work environment, and the adverse impact that workplace stress was taking on my health.
15. In doing so, I used words like “harassment,” “hostile work environment,” and “bullying.”
16. I believed that by making my complaints, I was opposing unlawful workplace practices, and that I would be protected from retaliation. Unfortunately, I was wrong.
17. I believed, and do believe, that my references to my health, and the impact on my health, placed SWBOCES and my administration on notice of my opposition to a hostile work environment based on my disabilities.
18. Additionally, I believe that the delays, and/or failures to investigate my complaints, including the Dignity for All Act: Employee Reporting form, was intended to prevent me from opposing workplace harassment and discrimination, and cause me to experience physical and mental pain, which I did in fact experience.
19. I believe this was intended to force me from my tenured employment with SWBOCES.
20. I believe that my known medical conditions, and my administrations’ knowledge of how I experienced stress relating to work, created a mechanism by which I was targeted for harassment by my administration, with the intent to cause me to require medical leave.

21. In fact, I am aware that during the 2015/16 School Year, my health and absences were the topic of conversations among my supervisors, occurring during the scope of weekly meetings of SWBOCES principals, and that in the presence of John Knight, as well as James Gratto, my mental state, my absences, my taking of medical leave, and the alleged hardships relating to these issues were discussed.
22. Due to the continued workplace harassment I experienced at SWBOCES, culminating in the 2015/16 School Year, and based on conversations with my doctors, I believed I had no other choice but to leave employment with SWBOCES, due to the negative impact that was taking place and jeopardizing my health.
23. Because of the harassment I was experiencing, and the negative impact it was having on my health, including my need for medical leave, and the repeated failures to investigate my complaints and provide relief, I was forced to leave a tenured teaching position, held for nearly thirty (30) years, and without comparable employment opportunities. In fact, to date, I have been unable to mitigate the economic injury I have experienced, despite my efforts, and am making significantly less money. Though I have taken effort to find consulting positions and leave replacement teaching positions, I continue to experience continued financial loss.
24. However, following my loss of employment with SWBOCES, and due to the treatment and harassment I experienced during the conclusion of my employment with SWBOCES, I needed approximately six (6) months of mental health rehabilitation in order to be physically and mentally able to pursue employment.
25. It is respectfully requested that upon careful review of the exhibits attached hereto, and our Memorandum in Opposition, this Court deny Defendant's motion in its entirety.


Kathleen O'Hara

Subscribed and sworn to
before me this 23rd day
of August, 2019


Signature of Notary Public

LAURA TJADEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TJ6213596
Qualified in Nassau County
My Commission Expires 11-16-2021